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BY THE HOUSE OF DELEGATES,
April 1st, 1874.

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By order,

MILTON Y. KIDD,

Chief Clerk.

THE
OYSTER LAW OF MARYLAND.

JANUARY SESSION, 1874.

AN ACT TO REPEAL ARTICLE SEVENTY-ONE OF THE CODE OF
PUBLIC GENERAL LAWS, TITLE

“OYSTERS,”

AS AMENDED AND RE-ENACTED BY CHAPTER THREE HUN-
DRED AND SIXTY-FOUR, OF THE ACTS PASSED AT JANU-
ARY SESSION, EIGHTEEN HUNDRED AND SEVENTY,
AND ALSO CHAPTER ONE HUNDRED AND SIXTY-
SEVEN OF THE ACTS PASSED AT THE JANUARY
SESSION, EIGHTEEN HUNDRED AND
SEVENTY-TWO.

ANNAPOLIS:

S. SANDS MILLS & L. F. COLTON,

Printers to the House of Delegates.

1874.

A BILL

Entitled an Act to repeal Article seventy-one, of the Code of Public General Laws, title "Oysters," as amended and re-enacted by chapter three hundred and sixty-four, of the Acts passed at January Session, eighteen hundred and seventy, and also chapter one hundred and sixty-seven, of the Acts passed at the January Session, eighteen hundred and seventy-two.

Be it enacted by the General Assembly of Maryland, That chapter three hundred and sixty-four, of the Acts passed at the January session, eighteen hundred and seventy, and chapter one hundred and sixty-seven, of the Acts passed at January session, eighteen hundred and seventy-two, be, and the same are hereby, repealed, and the following enacted in lieu thereof, and to be Article seventy-one, of the Code of Public General Laws, title "Oysters :"

SECTION 1. *Be it enacted, That no steamer shall be used in catching oysters in this State, and no other boat shall be used in catching oysters with scoop, dredge or similar instrument, without first having been licensed as hereafter provided.*

SEC. 2. *And be it enacted, That the Comptroller of the Treasury shall, upon application of any person who has been a resident of this State for twelve consecutive months next preceding such application, and to no other person, issue a license to such resident to employ such boat in catching oysters with scoop, dredge or similar instrument, within the waters of the Chesapeake Bay and in Eastern Bay, outside of a line drawn from the southwest corner of Second Kent Point to Wade's Point ; Provided, That nothing herein contained shall authorize the catching of oysters with scoop, dredge or similar instrument, on any oyster bar within one and a half miles of Talley's Point, Sandy Point, Hackett's Point, Thomas' Point, Holland Island Bar, Three Sisters, Swan Creek Bar, Poplar Island, one-quarter of a mile west of, and between the Island and the main land, nor within half mile of Plum Point, and to buy and sell oysters in this State, which license shall hold good for one year, but shall only authorize the catching of oysters between the first of October and the first of May ; but it shall*

be lawful for the owner of any such boat licensed, whenever said owner shall sell and convey by bill of sale for a *bona fide* consideration, said boat unto any person who has been a resident of the State of Maryland for at least one year, to transfer the said license to said vendee with said boat, which license, when transferred, shall entitle said vendee with said boat to the same privileges for catching oysters in the waters of this State, that the original vendor or assignor had before said consignment; *Provided*, The said vendee and assignee shall appear before the Comptroller of the Treasury, and make oath before him to all the facts, matters, things and prerequisites required of said original vendor or assignor before taking out such license, upon which said license said Comptroller shall certify the fact of said vendee or assignee having taken said oath, and for which said assignee or vendee shall pay the sum of five dollars, to be paid to the State of Maryland.

SEC. 3. *And be it enacted*, That the owner of such boat shall make oath before the Comptroller or his Clerk, that he is the *bona fide* owner of such boat to be described in the license; that he has been a resident of the State for the time before mentioned; that there is no lien on said boat held by a non-resident; that the said boat is not held with an intention to violate the provisions of this law; such applicant shall produce before the Comptroller, at the time of such application, the Custom House enrollment or license of such boat; and if such boat is under Custom House tonnage, the owner shall swear as to her tonnage; the Master of such boat shall make oath before the Comptroller or his Clerk, that he has been a resident of the State of Maryland for twelve months next preceding the time of taking such oath.

SEC. 4. *And be it enacted*, That before granting such license, the Comptroller shall receive for it from the applicant, at the rate of three dollars per ton for every ton the boat may measure; the license shall be exhibited whenever called for by any officer of the State of Maryland.

SEC. 5. *And be it enacted*, That any person who shall violate any of the provisions of the preceding sections, shall be deemed guilty of a misdemeanor, and liable to indictment, and on conviction thereof in any Court in this State having criminal jurisdiction, shall be sentenced to the jail of the county where the case is tried, or to the penitentiary, for a term not exceeding two years, or fined not exceeding two hundred dollars, in the discretion of the Court.

SEC. 6. *And be it enacted*, That upon information given on oath to any Judge or Justice of the Peace, of any violation of any of the provisions of this Article, he shall issue his war-

rant for the arrest of the offender or offenders, which warrant shall be directed to the Sheriff or any Constable of the county wherein the said warrant is issued, or to any Commander or Deputy Commander of the State Fishery Force.

SEC. 7. *And be it enacted*, That any person who shall resist any officer authorized under this Act to make arrests, shall be deemed guilty of a misdemeanor, and upon indictment and conviction thereof in any Court having jurisdiction, shall be imprisoned in the jail of the county where the case is tried, or in the penitentiary, not more than two years, or fined not less than fifty nor more than five hundred dollars, in the discretion of the Court; the parties tried and acquitted under this Article, shall have the cost of such trial paid by the Comptroller of the State, out of the fund created by this Article.

SEC. 8. *And be it enacted*, That it shall be the duty of the Sheriff, Constable, or officers of the State Fishery Force, to arrest any person found violating the provisions of this Article, and bring the offender before a Judge of the Court having criminal jurisdiction, or a Justice of the Peace most convenient or accessible, to be dealt with as herein provided.

SEC. 9. *And be it enacted*, That the Judge or Justice of the Peace before whom any person may be brought, charged under oath with violating any of the provisions of this Article, shall cause the party to enter into recognizance with two sureties approved by said Judge or Justice of the Peace, in a sum not less than five hundred dollars, for his or their appearance at the first term of the Circuit Court thereafter, and in default thereof may commit the said party to jail.

SEC. 10. *And be it enacted*, That the fines accruing under this Article shall be paid by the Sheriff, Constable, or officer of the State Fishery Force collecting the same, within ten days, to the Clerk of the county or city where such fine may accrue, and such Clerk shall account for the same to the Comptroller of the Treasury in his next quarterly return.

SEC. 11. *And be it enacted*, That any boat owned wholly or in part by any non-resident, used in catching oysters in this State with scoop, dredge or similar instrument, shall be condemned by order of any Judge of the Circuit Court nearest the place of her capture, or, if captured in Baltimore, by order of the Judge of the City Court, and shall be sold by the Sheriff of the county where condemned, to the highest bidder for cash, after twenty days' notice of the time and place of sale, such notice to be published at least three times in a newspaper having the largest circulation, printed in Baltimore City, or in the county where condemned; one-fourth of the proceeds of such sale shall be paid to the party making the

capture, except the officers of the Fishery force, and the balance shall be paid into the Treasury of the State.

SEC. 12. *And be it enacted*, That any person who shall, without authority from the owner, catch oysters planted or bedded, shall be deemed guilty of a felony, and on conviction in the Circuit Court of the county wherein the oysters were bedded, shall be sentenced to the penitentiary for a term not exceeding three years.

SEC. 13. *And be it enacted*, That it shall be unlawful for any person to catch oysters, except for private use or for the purpose of replanting or bedding, in the waters of this State, or for sale to the citizens of the county wherein they are caught, or the county next adjoining, between the first day of May and the first day of September in each and every year; any person violating this section shall be deemed guilty of a misdemeanor, and fined by a Justice of the Peace of the county wherein the offence was committed, not exceeding fifty dollars.

SEC. 14. *And be it enacted*, That it shall be unlawful for any person to catch oysters on Sunday or at night, and any person violating this section shall be fined a sum not less than fifty, nor more than five hundred dollars, by the Judge or Justice of the Peace trying the case.

SEC. 15. *And be it enacted*, That the Comptroller of the Treasury shall have painted in black figures on white canvass, two sets of numbers corresponding to the license to catch oysters with scoop, dredge or similar instrument; each figure shall be twenty-two inches in length and of proportionate width, and the figures at least six inches apart, and he shall give to each person taking out such license two numbers thereof, one of which shall be firmly sewed upon the star-board-side, and in the middle of that part of the mainsail which is above the close reef; and the other number on the port-side and in the middle of that part of the jib which is above the bonnet and reef; these numbers shall be placed in an upright position, and worn at all times during the dredging season, and shall not be concealed or defaced, and no other number shall be exposed to view or used than that furnished by the Comptroller; any Captain who shall violate the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction in any Circuit Court of this State, shall be fined not less than fifty nor more than one hundred dollars, or imprisonment in the jail of the county where the case is tried, not more than six months, in the discretion of the Court, provided the Court or Jury trying the same shall be convinced that the provisions of this section have been intentionally violated.

SEC. 16. *And be it enacted*, That any resident of this State desiring to use any canoe or other boat in catching or taking Oysters for sale with rakes or tongs in any of the waters of this State, shall first obtain, by application to the Clerk of the Circuit Court for the county wherein he may reside, a license therefor; and such license shall have effect from the first day of June, in the year in which it may have been obtained, to the first day of June next succeeding; *Provided*, That such license shall not authorize the use of said canoe or boat in taking or catching Oysters in any creek, cove, river, inlet, bay or sound within the limits of any county other than that wherein the license shall have been granted, and that the boundaries of counties bordering on navigable waters shall be strictly construed, so as not to permit the residents of either county to take or catch Oysters beyond the middle of the dividing channel; *Provided*, That nothing in this section shall be so construed as to prevent the citizens of Calvert and St. Mary's counties from using the waters of the Patuxent River in common, or the citizens of Queen Anne and Kent from using the waters of the Chester River in common, or the citizens of Dorchester and Wicomico from using the waters of the Nanticoke in common, or the citizens of Queen Anne's and Talbot from using the waters of Wye River and the mouth thereof in common.

SEC. 17. *And be it enacted*, That each and every license to take or catch Oysters for sale with rakes or tongs, shall state the name and residence of the person to whom the same is to be granted, the number, together with the length, to be obtained by top or over all measurement of the canoe or boat licensed, the county in which the same is to be used, and the period at which said license will expire, and every applicant for such license shall pay to the Clerk of the Court where such license may be granted, and before the issuing and delivery of the same, according to the following rates, viz: For any boat measuring in length twenty feet or less, the sum of two dollars; measuring from twenty to twenty-five feet, the sum of three dollars; measuring from twenty-five to thirty feet, the sum of four dollars; and all over thirty feet, including sloops under Custom-House tonnage, the sum of five dollars each; and all Oysters taken with rakes or tongs shall be culled upon the natural beds where they are taken; the amount received from tonging license to be paid by the Clerk to the School Commissioners for the Public Schools of the respective counties where such license is issued; *Provided*, The sum received from white tongers shall go to white schools, and the sum from colored tongers to the colored schools.

SEC. 18. *And be it enacted*, That every applicant for license to use any canoe or other boat in taking or catching Oysters with rakes or tongs, shall be required to make oath or affirmation before the Clerk authorized to issue the same, or some Justice of the Peace on whose certificate of the taking of such oath or affirmation, the Clerk shall issue said license, that the facts set forth in said license are strictly true; that he has been a *bona fide* resident of the county for the twelve months next preceding his application for said license; that he desires and intends to use said canoe or boat only in the county in which he resides; that he will not allow the same to be used for taking Oysters by non-residents of the county, and that he will comply with and obey all the laws of this State regulating the taking or catching of Oysters; and every person to whom such license shall have been granted shall paint the number of his canoe or boat on the outside thereof, near the gunwale, in black figures, and not less than three inches in length, and of proportionate width, in a white ground; and no number other than in the said license shall be exposed to view on said canoe or boat; and any person failing to comply with this provision before using said boat or canoe for the purpose aforesaid, shall, on conviction thereof before a Justice of the Peace, be fined not less than five dollars, nor more than ten; and any person who may refuse to pay said fine, shall be committed to the county jail for the period of thirty days, or until said fine be paid.

SEC. 19. *And be it enacted*, That the Comptroller of the Treasury shall cause to be printed and delivered to the Clerks of the Circuit Courts of the several counties, the requisite number of such blank licenses, and take receipts for the same, as for other licenses furnished; and the said Clerks shall, on the first Monday of March and December in each year, return to the Comptroller a list and account of such licenses issued by them, and no license to take or catch oysters with rakes or tongs shall be issued to any boat or vessel which is licensed to take or catch oysters with scoop, drag, dredge or any similar instrument.

SEC. 20. *And be it enacted*, That if any person shall use any canoe or boat not licensed, as required by the preceding sections of this Article, in taking or catching oysters with rakes or tongs, except for private use, he shall, upon conviction thereof, before a Justice of the Peace for the county wherein the offence has been committed, be fined not less than twenty nor more than one hundred dollars; and in case of a refusal to pay said fine, said party shall be committed to the county jail for six months, or until said fine be paid.

SEC. 21. *And be it enacted*, That all moneys arising from the sale of licenses, or from fines, penalties and forfeitures imposed under this Article shall, upon warrant of the Comptroller, be paid into the Treasury, and placed to the credit of the Oyster Fund, and the Comptroller is hereby required to state in his Annual Report particularly the receipts and expenditures on account of said fund, and the balance standing to the credit of the State at the time of making such Report.

SEC. 22. *And be it enacted*, That the owner or owners of any land bordering on any of the navigable waters of this State, the lines of which extend into and are covered by said waters, shall have the exclusive privilege of using the same for protecting, sowing, bedding or depositing oysters or other shell-fish within the lines of their own land, and any owner or owners of land lying and bordering upon any of the waters of this State, shall have power to locate and appropriate in any of the waters adjoining his, her or their lands, five acres for the purpose of protecting, preserving, depositing, bedding or sowing oysters, or other shell-fish; and that any other citizen of the State shall have power to locate and appropriate five acres in any waters in said State not located or appropriated; *Provided*, Thirty days notice in writing shall be given the owner or owners, occupant or occupants of land bordering on said water proposed to be located, that the owner or owners, occupant or occupants may have priority of claim, and if they shall fail to locate or appropriate the water mentioned in said notice within thirty days after receiving the same, then it shall be open and free to any one, under the provisions of this section; *Provided, also*, That the said location or appropriation shall be described by stakes, bushes or other proper and visible marks, metes and bounds, which description shall be reduced to writing, under the oath of some competent Surveyor, and recorded at the expense of the party locating or appropriating the same, in the office of the Clerk of the Circuit Court in the county wherein such lands may be located; *And provided, also*, That such location and appropriation shall not injure, obstruct or impede the free navigation of such waters; *And provided*, That no natural bar or bed of oysters shall be so located or appropriated, and that six months peaceable possession of all locations of oyster grounds, under the laws of this State, shall constitute a good and sufficient title thereto, but should any one within the six months hereinbefore provided, be charged with locating or appropriating any natural bed or bar hereinbefore prohibited, the question may be at once submitted, by any person interested, to the Judge of the Circuit Court in the county where

such question shall arise, who, after having given notice to the parties interested, proceed to hear the testimony and decide the case, and if decision be in favor of the party locating said five acres, said decision shall be recorded with the original record of said five acres, and shall in all cases be conclusive evidence of title thereto.

SEC. 23. *And be it enacted*, That if any creek, cove or inlet, not exceeding one hundred yards at low water in breadth at its mouth, make into the lands, or that if any creek, cove or inlet, of greater width than one hundred yards at low water mark make into the lands, the owner or owners, or other lawful occupant or occupants, shall have the exclusive right to use such creek, cove or inlet, when the mouth of said creek, cove or inlet is one hundred yards or less in width, and when the said creek, cove or inlet is more than one hundred yards in width at its mouth at low water, the said owner or owners, or other lawful occupant or occupants, shall have exclusive right to use such creek, cove or inlet, so soon as said creek, cove or inlet, in making into said land or lands, shall become one hundred yards in width at low water for preserving, depositing, bedding or sowing oysters or other shell-fish, although such cove, creek or inlet, may not be included in the lines of any patent.

SEC. 24. *And be it enacted*, That the sum of twenty thousand dollars is hereby appropriated from the Oyster Fund of this State, to purchase or build six suitable sail vessels, and to arm and equip the same for the service hereinafter specified, which, together with other vessels now in the service of the State, shall be styled the "State Fishery Force," and the Governor, Treasurer, Comptroller, Commissioner of the Land Office, and the Clerk of the Court of Appeals, shall constitute a Board, to be styled the "Commissioners of the State Fishery Force," and they are directed to purchase, arm and equip said vessels; *Provided*, That the Board aforesaid shall under no circumstances exceed the above appropriation, and the Treasurer of the State, upon the requisition of said Commissioners and the warrant of the Comptroller, is hereby directed to pay the sum or sums necessary, not exceeding this and any other appropriation hereinafter mentioned, for the purposes herein specified:

SEC. 25. *And be it enacted*, That said Commissioners are empowered and directed to purchase for each of the guard boats belonging to said Force, one suitable cannon, and such other arms and ammunition as may be necessary to make them efficient.

SEC. 26. *And be it enacted*, That for the more efficient

working of said Fishery Force, the waters of the State shall be divided into six districts, of which the waters of Somerset county shall constitute the first district; the waters of Wicomico and Dorchester counties the second; the waters of Talbot county the third; the waters of Kent and Queen Anne's counties the fourth; the waters of Anne Arundel county the fifth; the waters of Calvert, Charles and St. Mary's counties the sixth; each of which said districts shall be guarded by one sailing vessel, except the second and sixth districts, which shall each be guarded by two sailing vessels; the vessel to be designated by the Commissioners of said Fishery Force, and shall be under the General Supervision of the Commander of said Force.

SEC. 27. *And be it enacted*, That the Board of Commissioners of the State Fishery Force shall have the power to appoint a suitable person to command said Force; to appoint the Deputy Commanders for their respective districts from persons of the counties whose waters comprise the different districts, who shall be commissioned by the Governor, and the said Commander and Deputy Commanders shall have power to appoint their subordinates and select their crews, and the term of office of said Commander and Deputy Commanders shall be for two years, unless sooner removed for incompetency or neglect of duty, and if any of said officers shall fail in the discharge of his duties by reason of collusion with parties interested in violating any of the provisions of this Act, he shall be guilty of a misdemeanor, and on indictment and conviction in a Court of Law, shall be fined or imprisoned at the discretion of the Court.

SEC. 28. *And be it enacted*, That the Board of Commissioners of the State Fishery Force shall have the power to remove any officer of said Force for neglect of duty or incompetency, and any officer commanding in said Force shall have the power to remove any subordinate under his command, and appoint a person to fill the vacancy whenever the interest of said service may, in his judgment, require him to do so.

SEC. 29. *And be it enacted*, That the said Board of Commissioners shall have power to keep the steamer and said vessels in good order, and the Treasurer of the State, upon requisition of said Commissioners and the warrant of the Comptroller, is hereby directed to pay the sum or sums necessary to carry out the provisions of this section.

SEC. 30. *And be it enacted*, That the Commanding Officer who shall have charge of the steamer, may be selected from the State at large, but that the Deputy Commanders shall be selected from the districts in which they are to serve

SEC. 31. *And be it enacted*, That the Commanding Officer be, and he is hereby, required to keep his vessel constantly on duty when circumstances will permit, that every locality where a violation of the law is likely to occur, shall be visited as often as the duties of the Force and condition of the vessel will allow, and that every three months a report shall be made to the Commissioners of the Fishery Force of all official action taken under the law, and of all moneys received for license issued to parties engaged in carrying Oysters taken in this State, which, on warrant of the Comptroller, shall be paid into the Treasury.

SEC. 32. *And be it enacted*, That it shall be the duty of the Deputy Commanders to confine themselves ordinarily to their several districts, but it shall be competent for them to enforce any of the provisions of this Act in any waters adjacent to their districts, when a violation of the same shall come to their knowledge, and that they shall report quarterly to the Comptroller the amount of moneys received for license issued to persons engaged in carrying Oysters taken in this State, and on receiving his warrant shall pay the same into the Treasury.

SEC. 33. *And be it enacted*, That the Commanding Officer and Deputy Commanders of said Force shall, before entering upon the discharge of their duties, take, before one of the Judges of a Circuit Court, the oath prescribed by the Constitution, and shall enter into bond to the State of Maryland in the sum of three thousand dollars, to be approved by said Judges, for the faithful performance of their duties as prescribed in this Act.

SEC. 34. *And be it enacted*, That the salary of the Commanding Officer in charge of steamer shall be two thousand five hundred dollars per annum, and he shall have power to appoint one officer at twelve hundred dollars per annum, one engineer at twelve hundred dollars per annum, and one officer at nine hundred dollars per annum, three seamen at thirty dollars per month, two seamen at twenty-five dollars per month, one fireman at thirty-five dollars per month, one fireman at thirty dollars per month, one fireman at twenty-five dollars per month, one steward at twenty-five dollars per month, one cook at twenty-five dollars per month, and each Deputy Commander shall receive a salary of twelve hundred dollars per annum, and shall have power to appoint one officer at a salary of eight hundred dollars per annum, and three seamen at a salary of forty dollars per month, each to be selected from the district in which they are to serve.

SEC. 35. *And be it enacted*, That the officers and crew of

steamer aforesaid shall each receive one ration per day of the quality and quantity such as is allowed by law to the officers and crew of the Revenue Marine of the United States, but no ration shall be allowed to officers or crews of the sailing vessels.

SEC. 36. *And be it enacted*, That the officers and crew aforesaid shall be paid monthly by the Treasurer, upon warrant of the Comptroller and the certificate of Commanding Officers that their duties have been performed as required by law; and the Board of Commissioners of the State Fishery Force shall have power to appoint some suitable person to perform the duty of clerk to said Commissioners, and allow such compensation to said clerk as in their judgment may be proper; *Provided*, The amount so paid does not exceed five hundred dollars per annum.

SEC. 37. *And be it enacted*, That nothing contained in this Act shall affect any suits, actions, presentments or indictments now pending before any tribunal of this State which have been instituted under the provisions of the Article hereby repealed.

SEC. 38. *And be it enacted*, That nothing in this Act shall be construed so as to apply to Worcester county.

SEC. 39. *And be it enacted*, That nothing in this Act shall be construed to prohibit vessels from seeking harbors in any waters of this State.

SEC. —. *And be it enacted*, That this Act shall take effect from the date of its passage.

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